

I.

Explanatory memorandum

Draft Decree amending Decree No 376/2016 on dual-use items in the nuclear area

I. General part

1. Description of the content of the draft legislation, stating the reasons for its submission and a summary of the basic principles and the most important changes it introduces compared to the current legislation.

Draft Decree amending Decree No 376/2016 on dual-use items in the nuclear area (hereinafter the 'Draft Decree') is being submitted in connection with the amendment to Act No 263/2016, the Atomic Act (hereinafter the 'Act'), i.e. Act No 83/2025 amending Act No 263/2016, the Atomic Act, as amended.

The State Office for Nuclear Safety (SONS) is authorised to issue the Decree under the provisions of § 236 of Act No 263/2016, the Atomic Act.

The Draft Decree generally responds to changes introduced by the amendment to the Act in the area of non-proliferation of nuclear weapons, i.e. in particular closer specification of reporting of activities related to nuclear material and selected items and transfer of nuclear items.

The Draft thus takes into account amendments to the Act eliminating some of the original obligations in the area of monitoring the movement of dual-use items. In the case of dual-use items in the nuclear field, notification of transfer is no longer required by the Act (§ 11 in conjunction with § 18 of the Act).

The Draft amendment to the Decree proposes only minimal individual changes to the original text of the Decree. It specifies more closely and clarifies the list of specific types of movements of dual-use items in the nuclear area.

Another objective of the proposed amendment is to adapt the list of dual-use items in the nuclear area to the newly updated versions of international standards adopted within the international Nuclear Suppliers Group, of which the Czech Republic is a member. These standards (Nuclear Suppliers Group Guidelines) are an essential practical instrument in the area of nuclear non-proliferation in which the latest knowledge is taken into account.

The Draft Decree is fully in line with international treaties regulating the area of dual-use items in the nuclear area that have been concluded so far. The draft responds to the updated regulation of

international standards based on the regime of relevant international treaties, in the field of regulation of the management of dual-use items in the nuclear area.

Some original provisions have been deleted and, in the interests of consistency and greater clarity for the addressees of the standard, combined with others. The draft shortens, simplifies and clarifies the text of the Decree and overall reduces the regulatory burden and administrative complexity in this area. The draft does not change the substance of regulation in this area.

2. Assessment of the existing legal situation

The existing Decree No 376/2016 on dual-use items in the nuclear area came into effect on 1 January 2017 and has not been amended to date.

The primary purpose of the new amendment is to follow up on the amendment to the Act, in which the draft takes into account the elimination of certain original obligations in the area of monitoring the movement of dual-use items in the form of transfers. In the case of dual-use items in the nuclear field, notification of transfer is no longer required by the Act (§ 11 in conjunction with § 18 of the Act).

At the same time, the draft responds to the evaluation of the results of current application practice and, as part of the first ever amendment to the Decree, aims to clarify the wording of certain provisions.

The terminology used in the given area is unified and clarified, where the term ‘transfer’ in its former meaning more generally covered other variants of movement, while in accordance with the current terminology, transfer is only the movement of items within the EU.

At the same time, the original term ‘for military purposes’ is clarified to a more suitable variant. This change also responds more appropriately to the current geopolitical situation and reality.

There is also harmonisation of the explicit data requirements in the declaration of end-use of the dual-use item, where the text in § 1 did not correspond to the text in the form contained in Annex 2 to the Decree and, at the same time, the text of the Decree needs to be adapted to the changed regime in the Act.

At the same time, the list of dual-use items in the nuclear area needs to be adapted in the context of new legislation to newly updated versions of international standards adopted within the framework of the Nuclear Suppliers Group, of which the Czech Republic is a member. This group of the multilateral export control regime has established sets of guidelines (standards).

These standards (Nuclear Suppliers Group Guidelines) are an essential practical instrument in the area of nuclear non-proliferation in which the latest knowledge is taken into account.

3. Evaluation of the draft legislation’s compliance with the constitutional order and other components of the legal order of the Czech Republic.

The draft legislation is fully compatible with the constitutional order and other components of the legal system of the Czech Republic.

4. Evaluation of the compliance of the draft legislation with the obligations arising for the Czech Republic from its membership of the European Union.

The draft legislation is fully compatible with the rules of the European Union, does not conflict with the case law of its judicial bodies and complies with general principles of law (e.g. legal certainty, proportionality, non-discrimination).

5. Assessment of compliance of the proposed legislation with international treaties binding on the Czech Republic.

The draft legislation is fully compatible with international treaties binding on the Czech Republic.

6. Expected economic and financial impact of the draft legislation on the state budget and other public budgets.

Given its nature, the draft legislation has no negative economic or financial impact on the state budget or other public budgets. Nor will the legislation have a negative economic and financial impact on economic operators, including small and medium-sized enterprises.

7. Justification for a possible draft for the Chamber of Deputies to give its consent to the draft legislation at first reading.

not relevant

8. Justification of any potential draft that the proposed legislation come into effect on a date other than 1 January or 1 July of the calendar year.

The effective date of the amendment to the Decree is stipulated as 1 April 2026.

In accordance with the rule introduced in § 9(2) of Act No 222/2016 on the Collection of Laws and International Treaties, which allows for the setting of a different effective date for legislation than the uniform effective dates, the possibility of setting a special effective date is used.

This is due to the obligation to notify the published regulation in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, in which minimum time limits are set between the notification of the technical regulation and its adoption or, more precisely, its efficacy.

In this case, the time limit for the entry into force of the provision is set longer than it would be based on the rule of uniform effectiveness, and the interest of vacatio legis institution is thus sufficiently fulfilled.

9. Justification of the individual provisions of the draft legislation; the justification shall include an explanation of their purpose and necessity, a description of the legal rules contained therein and of the rights and obligations arising therefrom.

See the special part of the explanatory memorandum.

10. Evaluation of whether the draft legislation contains a provision which by its nature would constitute a technical regulation under the legislation governing

technical requirements for products and information on compliance with the notification obligation under this legislation.

The draft legislation is subject to the notification obligation under the legislation governing technical product requirements.

11. Information on the consultation of the draft legislation with the European Central Bank and the outcome of the consultation if the draft legislation is subject to such consultation.

The draft legislation is not subject to such consultation.

12. Expected impact of the draft legislation, in particular.**12.1 Impact on the rights and obligations of natural persons and corporate entities.**

The proposed legislation merely refines, supplements and clarifies existing obligations and will therefore have no impact on the rights and obligations of natural persons and corporate entities.

No new obligations are being introduced beyond the scope of the original legislation. At the same time, the original provision of § 2 of the Decree was repealed. In the text of the amended § 1, the listed requirements for the content of the documentation for the permitted activity were thus added together with the listed requirements for the content of the end-use declaration. This legislative amendment represents a significant simplification and shortening of the text of the legislation. At the same time, it clarifies the list of required data for those the legislation concerns.

12.2 Impact on the business environment of the Czech Republic.

The draft legislation has none of the stated impacts.

12.3 Assessment of whether the draft legislation constitutes State aid.

The draft legislation does not constitute State aid.

12.4 Social impact, including impact on specific groups of the population, in particular the socially vulnerable, persons with disabilities and national minorities.

The draft legislation has none of the stated impacts.

12.5 Expected impact of the draft legislation on equality between men and women, if the draft legislation regulates or affects the status of natural persons.

The draft legislation does not contain any provisions that would have an impact on the issue of discrimination, nor does it envisage any impact on gender equality.

12.6 Environmental impact.

The draft legislation has none of the stated impacts.

12.7 Impact on the protection of children's rights.

The draft legislation has none of the stated impacts.

12.8 Impacts on national security or defence.

The draft legislation does not envisage the creation of risks in the field of security or defence of the state or their increase. On the contrary, the Draft Decree submitted will contribute to increasing state security, as its purpose is to refine the process of control of selected items in the nuclear area falling within the area of non-proliferation of nuclear weapons.

12.9 Impacts relating to the protection of privacy and personal data.

Formulation of the draft Decree included a personal data protection impact assessment. The Draft Decree does not introduce any changes that would have an impact in relation to the protection of privacy or the protection of personal data.

The draft legislation will not have any negative impact on the protection of privacy and personal data. It respects the legal framework for the protection and processing of personal data and its different parameters. It is consistent with the protection of privacy and personal data. The draft legislation complies with Act No 110/2019 on the processing of personal data, which regulates the rights and obligations in the processing of personal data, as well as with Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

The wording of the Decree concerning the required data in the end-use declaration is merely clarified. The original text of the Decree already requested the personal ID number or date of birth, but these data were explicitly specified only within the model declaration included in Annex 2 to the Decree. The wording of the requirements for completing the listed data in the end-use declaration laid down in § 1 of the Decree and in Annex 2 to the Decree are therefore to be harmonised.

From the perspective of processing personal data and the requirements of the GDPR, this is necessary processing for the purpose of the exercise of state authority and the performance of public administration tasks.

Personal data are required in the case of an application for a permit for the export, import and transit of a dual-use item on the basis of explicit requirements of the Atomic Act. In particular, personal data are requested when filling in the declaration of the end-user (natural person) as a permit holder pursuant to Annex 2 to the Decree.

The required data is necessary for the adequate and unambiguous identification of natural persons who handle items that fall under the strictly internationally regulated regime in the field of nuclear non-proliferation.

By default, personal data required under this Decree are only processed within the administrative file and their storage is governed by internal file and shredding rules.

13. Assessment of corruption risks of the draft legislation.

The draft legislation does not contain any provisions that could pose corruption risks.

14. Justification for any proposed derogation in the procedure for discussing the draft legislation.

not relevant

15. Information under the Lobbying Regulation Act

The draft legislation contains no provisions that would pose corruption risks.

II. Special part

Re Article I (Heading)

Re the introductory sentence

The enabling reference to § 18(5) of the Act is repealed, as the subject matter of the amended wording no longer applies to dual-use items, but only to selected items in the nuclear field and nuclear materials.

Re § 1

The original content of § 1 and § 2 is now unified only into the text of § 1. This is due to the effort to simplify and clarify the text of the Decree and to reduce possible duplications. At the same time, this reduces the regulatory burden and administrative burden for the addressees of this legislation.

The individual variants of movement of dual-use items in the nuclear area are specified. The original term ‘transfer’ covered, in general, all variants of movement. For reasons of greater clarity and legal certainty, the new text explicitly specifies the different options of movement (i.e. import, export) and responds to the change to the Act. Transfer as one variant of movement for dual-use items was deleted within as part of the amendment to the Act.

Re § 1(c)

Specifying only the expected date of import or export clarifies the situation where, at this stage, the document is supplied before the actual movement of the item takes place. The applicant or notifier can therefore only estimate the date of completion. The clarification of this wording is intended to exclude the interpretation of the provision as an overly strict obligation to indicate a specific date as a fixed date without any tolerance, which would leave no room for even minimal adaptation of the date in the event of any complications or, on the contrary, for expedited dispatch.

Re § 1(f)(2)

The new wording specifies more closely and clarifies individual activities that could involve the misuse of dual-use items in the nuclear area in the light of international obligations related to the non-proliferation of nuclear weapons.

Re § 1(f)(3)

The original obligation to notify further transfer of a dual-use item in the nuclear area or a part thereof to the territory of the Czech Republic was omitted. Similarly, the obligation to indicate the expected date of notification of information on the completed transfer is deleted. This reduces the regulatory burden and administrative burden for the addressees of this legislation.

Re § 3(1)(c)

The term ‘other commercial documents’ is replaced by the more appropriate and general term ‘other documents proving the relationship between the supplier and the end user’.

The amendment extends the options for the applicant to submit more different types of documents transmitted with the purpose of demonstrating the relationship between the supplier and the end user. The subject of this relationship is all movement of dual-use items in the nuclear area. The documents requested serve as a basis for requesting a guarantee from the receiving State of the end user.

On the designation of Annex 1, Annex 1

This list is based on relevant standards (checklists) issued under the International Non-Proliferation Control Regime based on relevant international treaties (Nuclear Suppliers Group Part 2 Guidelines). These checklists are subsequently confirmed by publication in the circulars of the International Atomic Energy Agency.

The Dual-Use Items List is now published in a completely new version that reflects the updated international standards. The List follows the traditional established numbering and labelling structure for the content of international standards.

Re the Annex

The end user declaration specimen is merely adapted to the more precise terminology used in this amendment to the Decree.

In addition, the original point (c) of the declaration that related to the notification of the transfer of dual-use items is explicitly deleted, since the obligation to notify the transfer was omitted from the amendment to the Act.